

[Order filed & entered 9-15-09]

IN THE IOWA DISTRICT COURT FOR BOONE COUNTY

FILED
2009 SEP 15 PM 4:21
CLERK OF DISTRICT COURT
BOONE COUNTY, IA

STATE OF IOWA, ex rel., THOMAS J.
MILLER, ATTORNEY GENERAL OF
IOWA (99AG23112),

Plaintiff,

vs.

HECK'S DOZER, INC.,

Defendant.

LAW NO. 38418

**CONSENT ORDER,
JUDGMENT AND DECREE**

NOW on this 15 day of September, 2009, the Court is presented with the plaintiff's petition seeking civil penalties and injunctive relief pursuant to Iowa Code sections 480.6 and 480.7. The Court having read the petition and being otherwise advised by the parties FINDS:

1. The Court has jurisdiction of the parties and the subject matter of this action and the parties consent to entry of this Consent Order, Judgment and Decree.
2. Defendant Heck's Dozer, Inc. admits, for purposes of settlement and for this action only, the violations alleged in paragraphs thirty-one (31) through thirty-three (33) of the Petition at Law.

THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. Defendant Heck's Dozer, Inc. is assessed a civil penalty of Ten Thousand and no/100 Dollars (\$10,000.00) for the violations admitted herein. The defendant shall pay the civil penalty within ten (10) days of the entry of this Consent Order, Judgment and Decree. The defendant shall also pay interest pursuant to Iowa Code section 535.3(1) on any unpaid balance. Payments of the civil penalty


and interest shall be made payable to the State of Iowa and submitted to plaintiff's attorney, David R. Sheridan, at the address noted below.

2. Defendant Heck's Dozer, Inc., its officers, employees, agents, successors and all other persons, corporations and other entities acting in concert or participating with the defendant who have actual or constructive notice of this injunction, are permanently enjoined from commencing any excavation in the State of Iowa, except during an emergency pursuant to Iowa Code section 480.4(6), without first contacting the statewide notification center (1-800-292-8989 or 811) at least 48 hours prior to the planned excavation, excluding weekends and legal holidays, as required by Iowa Code sections 480.1A and 480.4(1)(a), and providing the information required by Iowa Code sections 480.4(1)(b)(1)-(8) and 480.4(1)(c)(1)-(8); and the defendant is further enjoined from commencing any excavation except under the schedule and pursuant to the terms of each such notification. The defendant is further enjoined from violations of Iowa Code section 480.5 and, in the event an underground facility is damaged during an excavation, the defendant shall notify as soon as practical the operator of the underground facility of the damage, the type of damaged facility, and the extent of the damage.

3. The Court retains jurisdiction of this matter to insure compliance with the terms of this Order.

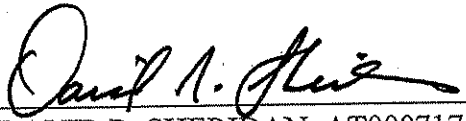
4. The costs of this action are taxed to the defendant in the amount of \$ 185⁰⁰

(Clerk to enter).


JUDGE, Second Judicial District of Iowa

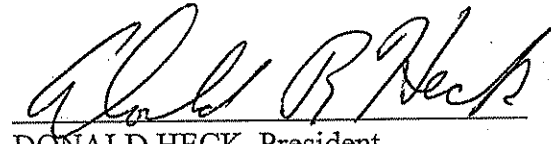
Approved as to form:

THOMAS J. MILLER
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COPY HERE OF MAILED OR
DELIVERED TO _____

- all parties
ON 9/16/09
OFFICE OF THE CLERK OF DISTRICT COURT
BOONE COUNTY, IOWA

[Petition/lawsuit filed 9-14-09]

IN THE IOWA DISTRICT COURT IN AND FOR BOONE COUNTY

STATE OF IOWA, ex rel., THOMAS J.
MILLER, ATTORNEY GENERAL OF IOWA
(99AG23112),

Plaintiff,

vs.

HECK'S DOZER, INC.,

Defendant.

LAW NO.

LAOV 38418

PETITION AT LAW

COMES NOW Plaintiff State of Iowa, ex rel., Thomas J. Miller, Attorney General of Iowa,
and for claim against Defendant Heck's Dozer, Inc., states as follows:

Introduction

1. The State of Iowa seeks the assessment of civil penalties and injunctive relief against Heck's Dozer, Inc., for violations of the "Iowa One Call" statute, Iowa Code chapter 480. The defendant failed to provide prior notice of excavations to the One Call Notification Center, and proceeded with the excavations without any underground facilities having been located and marked. During the excavations, the defendant damaged a natural gas pipeline and failed to notify the operator as soon as practical of the damage to the natural gas pipeline.

Parties

2. The State of Iowa is a sovereign state of the United States of America.
3. Thomas J. Miller is the duly elected Attorney General for the State of Iowa.

4. Defendant Heck's Dozer, is an Iowa corporation with its home office located at Ogden, Iowa.

Definitions

5. "Emergency" means "a condition where there is clear and immediate danger to life or health, or essential services, or a potentially significant loss of property." Iowa Code § 480.1(3).

6. "Excavation" means "an operation in which a structure or earth, rock, or other material in or on the ground is moved, removed, or compressed, or otherwise displaced by means of any tools, equipment, or explosives and includes, but is not limited to, grading, trenching, tiling, digging, ditching, drilling, augering, tunneling, scraping, cable or pipe plowing, driving, and demolition of structures." Iowa Code § 480.1(4).

7. "Excavator" means "a person proposing to engage or engaging in excavation." Iowa Code § 480.1(5).

8. "Operator" means "a person owning or operating an underground facility including, but not limited to, public, private, and municipal utilities. An operator does not include a person who owns or otherwise lawfully occupies real property where an underground facility is located only for the use and benefit of the owner or occupant on the property." Iowa Code § 480.1(8).

9. "Underground facility" means an "item of personal property owned or leased by the operator which is buried or placed below ground for use in connection with the storage or conveyance of, or the provision of services supplying water, sewage, electronic, telephonic, or telegraphic communications, electric energy, hazardous liquids, or petroleum products including natural gas or other

substances, and includes, but is not limited to, pipes, sewers, conduits, cables, valves, lines, wires, manholes, and attachments to such property but does not include sanitary sewer laterals, storm sewer laterals, and water service lines providing service to abutting private properties.” Iowa Code § 480.1(10).

Jurisdiction

10. Iowa Code chapter 480, commonly referred to as the “Iowa One Call” statute, establishes a statewide notification center to receive, document and process notices of excavations. The statute also creates certain duties for excavators and owners and operators of underground facilities.

11. Iowa Code section 480.1A provides that a person shall not engage in any excavation unless the requirements of chapter 480 have been satisfied.

12. Iowa Code section 480.4(1)(a) provides that, prior to any excavation, an excavator shall contact the statewide notification center and provide notice of the planned excavation. The notice must be given at least 48 hours prior to the commencement of the excavation, excluding weekends and legal holidays. Notice is provided by calling the notification center at its toll-free number (1-800-292-8989 or 811). The notice for a location outside of a city shall include:

1. the name of the county, township, range and section;
2. the name and address of the excavator;
3. the excavator’s telephone number;
4. the type and extent of the proposed excavation;
5. whether the discharge of explosives is anticipated;

6. the date and time when excavation is scheduled to begin;
7. approximate location of the excavation on the property; and
8. if known, the quarter section, E911 address and global positioning system coordinate, name of property owner, name of housing development with street address or block and lot numbers, or both.

Iowa Code §§ 480.4(1)(c)(1)-(8).

13. Pursuant to Iowa Code section 480.4(2), the notification center upon receiving notice from an excavator must then immediately transmit the information contained in the notice to each operator of underground facilities in the area of the proposed excavation and provide the names of all operators in that area to the excavator. Operators of underground facilities receiving notice must then mark the horizontal location of their underground facilities within 48 hours after receiving the notice, excluding weekends and legal holidays, unless otherwise agreed by the operator and the excavator. Iowa Code § 480.4(3)(a)(1).

14. The only exception to the requirements of Iowa Code section 480.4 is “when an emergency exists.” Iowa Code § 480.4(6).

15. An excavator shall as soon as practical notify the operator when damage occurs to an underground facility as a result of an excavation, including the type of facility damaged and the extent of the damage. Iowa Code § 480.5.

16. Iowa Code section 480.6(1)(a) provides that a person who violates a provision of chapter 480 is subject to a civil penalty, when the violation is related to natural gas and hazardous liquid pipelines, in an amount not to exceed Ten Thousand Dollars (\$10,000.00) for each violation for each day the violation continues, up to a maximum of Five Hundred Thousand Dollars (\$500,000.00).

17. Iowa Code section 480.6(2) authorizes the Attorney General, upon the receipt of a complaint, to institute legal proceedings necessary to enforce the penalty provisions of chapter 480.

18. Iowa Code section 480.7 authorizes injunctive relief from any violation of Iowa Code chapter 480.

Facts

19. On or about August 26 through September 2, 2008, the defendant conducted excavations to clear brush in Section 17, T83N, R28W in rural Boone County, Iowa. The defendant did not contact the One Call Notification Center regarding these excavations and, thereby, failed to provide notices to operators of underground facilities whose facilities may be affected by the excavation. Instead, the defendant proceeded with the excavations without any underground facilities having been located and marked on the property.

20. Northern Natural Gas is the owner and operator of four natural gas pipelines, which run underground in the vicinity of where the excavations occurred. NNG Pipeline A is a 24-inch diameter natural gas pipeline under 198.9 pounds per square inch (psi) pressure. NNG Pipeline B is a 26-inch diameter natural gas pipeline under 745 psi of pressure. NNG Pipeline C is a 30-inch diameter natural gas pipeline under 745 psi of pressure. NNG Pipeline D is a 30-inch diameter natural gas pipeline under 800 psi of pressure.

21. Natural gas is explosive and highly flammable.

22. On or about August 29, 2008, the defendant's excavation struck and damaged NNG Pipeline A.

23. The defendant failed to notify Northern Natural Gas of the damage to NNG Pipeline A until September 2, 2008.

24. After being notified of the damage, Northern Natural Gas investigated and then repaired the damaged pipeline on September 3, 2008.

25. On or about May 21, 2009, the defendant again conducted excavations to clear brush in Section 17, T83N, R28W in rural Boone County, Iowa. The defendant again did not contact the One Call Notification Center regarding this excavation and, thereby, failed to provide notices to operators of underground facilities whose facilities may be affected by the excavation. Instead, the defendant proceeded with the excavations without any underground facilities having been located and marked on the property.

26. While conducting the excavations, the defendant crossed over NNG Pipeline D and was approaching NNG Pipelines B and C.

27. Digging to clear brush constitutes "excavation" as defined in Iowa Code section 480.1(4).

28. At all material times hereto, defendant was an "excavator" as defined in Iowa Code section 480.1(5).

29. A buried natural gas pipeline is an "underground facility" as defined in Iowa Code section 480.1(10).

30. At all material times hereto, there was no "emergency," as defined in Iowa Code section 480.1(3), that would exempt defendant from the requirement that it contact the statewide notification center prior to the excavations and, thereby, provide notice to owners and operators of underground facilities whose facilities may be affected by the excavations.

Violations

31. On or about August 26 through September 2, 2008, Defendant Heck's Dozer, Inc. engaged in excavations in Section 17, T83N, R28W within Boone County, Iowa, without first

contacting the statewide notification center and providing notice, in violation of Iowa Code sections 480.1A, 480.4(1)(a), and 480.4(1)(c)(1)-(8).

32. After damaging NNG Pipeline A on August 29, 2008, Defendant Heck's Dozer, Inc. failed to notify the operator, Northern Natural Gas, until September 2, 2008, in violation of Iowa Code sections 480.1A and 480.5.

33. On or about May 21, 2009, Defendant Heck's Dozer, Inc. engaged in excavations in Section 17, T83N, R28W within Boone County, Iowa, without first contacting the statewide notification center and providing notice, in violation of Iowa Code sections 480.1A, 480.4(1)(a), and 480.4(1)(c)(1)-(8).

Prayer for Relief

WHEREFORE, Plaintiff State of Iowa, ex rel., Thomas J. Miller, Attorney General of Iowa, requests that the Court:

a. assess a civil penalty against Defendant Heck's Dozer, Inc., pursuant to Iowa Code section 480.6(1)(a) for each day of violation of Iowa Code sections 480.1A, 480.4(1)(a), 480.4(1)(c)(1)-(8), and 480.5 involving natural gas pipelines, not to exceed Ten Thousand Dollars (\$10,000.00) for each day of each such violation; and

b. issue a permanent injunction enjoining Defendant Heck's Dozer, Inc. from commencing any non-emergency excavation in the State of Iowa, without first contacting the statewide notification center at its toll-free number (1-800-292-8989 or 811), at least 48 hours prior to the planned excavation, excluding weekends and legal holidays, as required by Iowa Code sections 480.1A and 480.4(1)(a), and providing the information required by Iowa Code sections 480.4(1)(b)(1)-(8) and 480.4(1)(c)(1)-(8); and further enjoining the defendant from commencing any excavation except under the schedule and pursuant to the terms of each such notification; and further enjoining the defendant from violations of Iowa Code section 480.5 and, in the event of damage, requiring the defendant to notify the operator of the damaged underground facility as soon as practical of the damage, type of damaged facility, and the extent of the damage.

Plaintiff further requests that the Court tax the costs of this action to the defendant and provide such other relief as the Court may deem just and proper.

Respectfully submitted,

THOMAS J. MILLER
Attorney General of Iowa

A handwritten signature in black ink, appearing to read "David R. Sheridan", is written over a horizontal line.

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